

the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed. Similar statutory language has been included in annual Defense appropriations acts and is presently implemented at DFARS 231.205-22(a), as a cost principle applicable to commercial organizations. This proposed rule expands the applicability of the cost principle to educational institutions; State, local, and federally recognized Indian tribal governments; and nonprofit organizations; as the statutory prohibition applies to all DoD contractors.

#### B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because most contracts awarded to small businesses are awarded competitively on a firm-fixed-price basis and, therefore, are not subject to DFARS cost principles. An initial regulatory flexibility analysis, therefore, has not been performed. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95-D714 in correspondence.

#### C. The Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

#### List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 231 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205-22 is revised to read as follows:

#### 231.205-22 Legislative lobbying costs.

(a) Preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed (10 U.S.C. 2247).

3. Section 231.303 is amended by adding paragraph (4) to read as follows:

#### 231.303 Requirements.

\* \* \* \* \*

(4) Under 10 U.S.C. 2247, the costs cited in 231.205-22(a) are unallowable.

4. Section 231.603 is amended by adding paragraph (3) to read as follows:

#### 231.603 Requirements.

\* \* \* \* \*

(3) Under 10 U.S.C. 2247, the costs cited in 231.205-22(a) are unallowable.

5. Section 231.703 is amended by adding paragraph (3) to read as follows:

#### 231.703 Requirements.

\* \* \* \* \*

(3) Under 10 U.S.C. 2247, the costs cited in 231.205-22(a) are unallowable.

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BILLING CODE 5000-04-M

#### 48 CFR Part 231

[DFARS Case 94-D007]

#### Defense Federal Acquisition Regulation Supplement; Internal Restructuring Costs

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

**SUMMARY:** The Department of Defense has decided to withdraw a proposed rule published on January 12, 1995 (60 FR 2924). The rule proposed revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to state that contractor costs associated with internal restructuring activities are unallowable unless allowable in accordance with FAR Part 31 and DFARS Part 231; an audit of projected restructuring costs and savings is performed; and the ACO determines that overall reduced costs should result for DoD and negotiates an advance agreement with the contractor. After review of public comments, DoD has determined that the proposed DFARS revisions are unnecessary.

**FOR FURTHER INFORMATION CONTACT:** Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139,

3062 Defense Pentagon, Washington, DC 20301-3062, (703) 602-0131.

Michele P. Peterson,  
*Executive Editor, Defense Acquisition Regulations Council.*

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#### DEPARTMENT OF TRANSPORTATION

#### Research and Special Programs Administration

**49 CFR Parts 107, 110, 171, 172, 173, 174, 175, 176, 177, 178, and 179**

[Docket HM-222A; Notice No. 95-12]

RIN 2137-AC69

#### Elimination of Unnecessary and Duplicative Hazardous Materials Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** RSPA is proposing to remove unnecessary, obsolete, and duplicative regulations contained in the Hazardous Materials Regulations (HMR). In addition, RSPA is proposing to reformat the Hazardous Materials Table and List of Hazardous Substances and Reportable Quantities that could eliminate approximately 100 pages of the CFR. The intended effect of this action is to make the HMR more user friendly, thus enhancing compliance. This action is in response to President Clinton's March 4, 1995 memorandum to heads of departments and agencies calling for a review of all agency regulations.

**DATES:** Comments must be received on or before December 18, 1995.

**ADDRESSES:** Please address written comments to the Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments may also be faxed to (202)366-3753. Comments should identify the docket (Docket No. HM-222A). The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street S.W., Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except on public holidays when the office is closed.

**FOR FURTHER INFORMATION CONTACT:** John A. Gale or Jennifer Antonielli, (202) 366-8553; Office of Hazardous Materials Standards, RSPA, Department of Transportation, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****I. Background**

On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those regulations that are outdated or in need of reform. RSPA has performed an extensive review of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), and associated procedural rules (49 CFR parts 106 and 107), in response to the President's directive.

The President also directed that front line regulators “\* \* \* get out of Washington and create grassroots partnerships” with people affected by agency regulations. On April 4, 1995, RSPA published in the Federal Register (60 FR 17049) a Notice of Public Meetings and request for comment on its hazardous materials safety program. Comments were requested on ways to improve the HMR and the kind and quality of services its customers want. RSPA held seven public meetings and received over 50 comments in response to the notice. On July 28, 1995, RSPA published a second Notice of Public Meetings in the Federal Register (60 FR 38888) which announced five more public meetings to be held from September to November 1995.

This NPRM proposes to remove those sections of the regulations that have been identified in RSPA's regulatory review, in comments, and in the public meetings held to date as being unnecessary, duplicative, or outdated. This rulemaking is one of several rulemakings that RSPA will initiate in response to its regulatory review, public meetings, and comments. In future rulemakings, RSPA will propose additional changes to the HMR. Some of the additional changes RSPA will be considering in separate rulemakings are:

- Exceptions for certain materials that are transported by private carriers as “materials of trade”;
- The recurrent training requirement to determine if it can be extended longer than two years;
- Limited exceptions from the emergency response telephone number requirement;
- Consolidation of the requirements for the construction, maintenance and use of cylinders;
- Updating and revising the rail and highway modal requirements in Parts 174 and 177; and
- Revising or eliminating the requirement to list each hazardous substance on a shipping paper and nonbulk package.

**II. Sections To Be Eliminated**

RSPA has identified over 100 sections in the HMR for possible elimination. In some sections, only certain paragraphs are being removed, and in others a particular paragraph may be retained and moved while the rest of the section is removed. Some of the more prominent changes proposed in this notice include: (1) Elimination of the requirements for carriers and shippers of flammable cryogenic liquids in bulk packagings to register with RSPA (§§ 173.11; 177.826); (2) a decrease in the frequency that manufacturers of cargo tanks have to register with RSPA from three years to six years (§ 107.504); and (3) removal of the requirement that RSPA publish in the Federal Register a list of those persons who request party status to an exemption (§ 107.111).

Many of the sections identified for removal in this NPRM impose little or no regulatory burden. However, by making the HMR a less voluminous set of regulations, RSPA believes the HMR will be more user friendly, thus enhancing compliance. In addition, if the HMR can be reduced in size, it may be possible to consolidate the two CFR volumes into one. This would save each purchaser of the HMR approximately \$30 per year.

**A. Reformatting the Hazardous Materials Table**

RSPA is also proposing a reformatting of the Hazardous Materials Table (HMT) in § 172.101 and Table 1 in Appendix A to § 172.101, “List of Hazardous Substances and Reportable Quantities”. The reformatting of these tables will eliminate approximately 100 pages of the CFR. In the label column (Column (6)) of the HMT, RSPA is proposing to identify the labels required by class number in lieu of spelling out the class name. For example, the POISON and KEEP AWAY FROM FOOD label would be identified as “6.1”, and FLAMMABLE LIQUID would be identified by “3”. For clarity, RSPA would add a table to the front of the HMT that clearly states what label is required for each numerical identifier.

In § 172.101, Appendix A, Table 1, RSPA is proposing to remove the synonym column. Because each synonym is specifically listed as a hazardous substance, there is no need to provide a list of synonyms for each hazardous substance. It is believed that this change will eliminate approximately 15 pages of the CFR.

**B. Unnecessary Sections**

The following sections are proposed for removal because they are deemed no

longer necessary or cost effective to remain in the HMR. A description of each section and the reason for its proposed removal is provided.

**Section 110.30(a)(4) Grant application.** This paragraph requires applicants for training and planning grants to provide a written statement explaining whether the State or tribe assess and collects fees on the transportation of hazardous materials and whether such assessments or fees are used solely to carry out purposes related to the transportation of hazardous materials. Since the fact that a state or tribe assess a fee on the transportation of hazardous materials has no bearing on the amount of its grant, and the Secretary now has specific statutory authority to obtain such information (section 5125(g)(2)) for reasons broader than application to the grant program, RSPA believes this requirement to be unnecessary is proposing to remove it.

**Appendix C to Part 172 Dimensional Specifications for Recommended Placard Holder.** This appendix provides specific recommended dimensions for a placard holder. RSPA believes that this appendix is no longer necessary, and is proposing to remove it from the HMR. In addition, § 172.516 would be revised to remove any reference to the specifications for the placard holder.

**Section 173.10 Tank car shipments.** This section contains specific requirements for offerors of tank cars containing certain hazardous materials that are no longer consistent with current industry practice. Therefore, RSPA would remove this section from the HMR.

**Section 173.324 Ethyl methyl ether.** This section provides non-bulk packaging requirements specific for Ethyl methyl ether. Instead of having a specific packaging section for this material, RSPA is proposing to change its packaging reference in column (8B) of the HMT to read “§ 173.201”, for the non-bulk packaging authorizations and would delete § 173.324.

**Section 173.451 Fissile materials—general requirements.** This section simply states that fissile radioactive packages must comply with requirements of §§ 173.451 through 173.459 and is unnecessary. Therefore, RSPA is proposing to remove it. In addition, a reference to § 173.451 contained in § 173.453 would be removed.

**Section 173.477 Approval for export shipments.** This section sets forth procedures for obtaining an approval for export shipments of packages for which an International Atomic Energy Agency certificate of competent authority has

been issued. RSPA is proposing to remove this section because the requirements for export shipments of hazardous materials, including radioactive materials, are specified in § 171.12.

**Section 173.478 Notification to competent authorities for export shipments.** This section requires shippers who export Type B quantities of Class 7 material to notify the competent authority of each country through which or into which the package is to be transported prior to the first shipment. The shipper is required to submit copies of all relevant competent authority certificates. RSPA is proposing to remove this section because the requirements for export shipments of hazardous materials, including Class 7 material, are specified in § 171.12.

**Section 174.16 Removal and disposition of hazardous materials at destination.** This section prescribes requirements for delivering hazardous materials to non-agency and agency stations and disposing of the materials in the event that they are not removed from the carriers property by the consignee. RSPA is proposing to remove the requirements of § 174.16 because they are outdated and unnecessary.

**Section 174.20 Local or carrier restrictions.** This section provides authorization for carriers to impose local restrictions when local conditions present an unsafe transportation environment. Also, § 174.20 states that carriers must report all carrier restrictions to the Bureau of Explosives. RSPA is proposing to remove § 174.20 because it believes that centralizing a list of all rail carrier restrictions should be an industry practice and not a regulatory requirement.

**Section 174.33 Lost or destroyed labels and placards.** This section requires rail carriers to maintain an adequate supply of labels and placards in case labels or placards become lost or destroyed. RSPA believes that § 172.516(c)(6) adequately addresses the carrier's requirement to maintain placards and is, therefore, proposing to remove the section.

**Section 174.107 Shipping days for Division 1.1 or 1.2 (Class A explosive) materials.** This section prescribes requirements for carriers to designate days in which Division 1.1 or 1.2 materials are accepted and delivered. RSPA is proposing to remove the requirements of this section because it generally applies to a shipment of explosives by an express railroad which is no longer a common practice.

**Section 174.109 Non-agency shipments.** This section provides

requirements for Class 1 shipments accepted by a carrier at a non-agency station. RSPA is proposing to remove this section because it is no longer necessary.

**Section 174.280 Division 2.3 (poisonous gas) materials with foodstuffs.** This section provides a prohibition from transporting packages labeled POISON GAS with foodstuffs. Division 2.3 materials present a hazard if inhaled but do not pose a hazard to foodstuffs or edible material. Therefore, RSPA is proposing to remove this section from the HMR.

**Section 174.410 Special handling requirements for matches.** This section provides special handling requirements for strike-anywhere matches. RSPA believes the modal operational requirements of this section are no longer necessary based on current packaging requirements for strike-anywhere matches. Therefore, RSPA is proposing to remove this section from the HMR.

**Section 174.450 Fires.** This section prescribes practical response measures that carriers should follow in the event of a fire in a shipment of cotton or charcoal. RSPA believes that mitigation measures like this are routinely taken by carriers. Therefore, RSPA is proposing to remove this section from the HMR.

**Section 174.510 Special handling requirements for nitrates.** This section prescribes requirements for carriers of nitrates to ensure that the rail car is closed, clean and free of projections before loading the nitrates. RSPA is proposing to remove this section because the requirements of subpart C of part 174 more than adequately cover the loading of this material in a rail car.

**Section 174.515 Cleaning cars; potassium permanganate.** This section provides cleaning requirements for rail cars previously containing potassium permanganate. RSPA is proposing to remove this section because the requirements of subpart C of part 174 more than adequately cover the cleaning of rail cars that previously contained a load of this material.

**Section 174.840 Special loading and handling requirements for asbestos.** This section prescribes requirements for minimization of occupational exposure to asbestos. RSPA believes that because other Federal regulations govern this area, this section is no longer necessary under the HMR.

**Section 175.640 Special requirements for Class 9 (miscellaneous hazardous) material.** This section prescribes requirements for the minimization of occupational exposure to asbestos. RSPA believes that because other Federal regulations govern this

area, this section is no longer necessary under the HMR.

**Section 176.33 Labels.** This section requires vessel carriers to maintain an adequate supply of labels in case labels become lost or destroyed. RSPA believes that this section imposes a cost to vessel operators that is not commensurate with the safety benefits achieved and, therefore, is proposing to remove this section.

**Section 176.79 Spaces exposed to carbon monoxide or other hazardous vapors.** This section prescribes occupational requirements for personnel exposed to carbon monoxide vapors. This section is unnecessary because it is covered in 46 CFR part 97.

**Section 176.906 Stowage and handling of asbestos.** This section prescribes requirements for minimization of occupational exposure to asbestos. RSPA believes that because other Federal regulations govern this area, this section is no longer necessary under the HMR.

**Section 177.811 Astray shipments.** This section prescribes requirements for a package that has lost its label. The section states that a carrier must place a Flammable liquid label on the package that has lost its label. RSPA is proposing to remove the requirements of § 177.811 because current industry practices and compliance with part 172 of the HMR (e.g., UN number markings on packages) make it very unlikely that a carrier will have "no knowledge" of the contents of a package of hazardous materials.

**Section 177.813 Inefficient containers.** This section states that experience gained on damaged packages must be recorded by the Bureau of Explosives to determine if a packaging should be prohibited from use. This action is no longer taken by the BOE nor is it necessary. Therefore, this section would be removed.

**Section 177.815 Lost or destroyed labels.** This section requires highway carriers to maintain an adequate supply of labels in case labels become lost or destroyed. RSPA believes that this section imposes a cost to highway carriers that is not commensurate with the safety benefits achieved and, therefore, is proposing to remove this section.

**Section 177.837(a) Class 3 (flammable) liquid materials.** Paragraph (a) of this section requires that the engine of a motor vehicle be turned off when the vehicle is being loaded with Class 3 materials. RSPA is proposing to remove this restriction because it is no longer necessary and often not practical, especially for application to diesel engines during cold weather.

*Section 177.838 Class 4 materials, Class 5 and Division 4.2 materials.* In this section, paragraphs (d) and (e) are proposed for removal. Section 177.838(d) prescribes requirements for "loose or baled nitrate of soda bags" and § 177.838(e) prescribes blocking and bracing requirements for "strike anywhere matches". RSPA is proposing to remove § 177.838(d) because "loose or baled nitrate of soda bags" are no longer routinely transported or do their hazards require compliance with § 177.838(d). RSPA is proposing to remove § 177.838(e) because these modal operational requirements are no longer necessary based on current packagings requirements for strike-anywhere matches.

*Section 177.844 Class 9 (miscellaneous hazardous) materials.* This section prescribes requirements for minimization of occupational exposure to asbestos. RSPA believes that because other Federal regulations govern this area, this section is no longer necessary under the HMR.

*Section 177.853 Transportation and delivery of shipments.* This section prescribes general requirements on the movement of hazardous materials. The provisions of paragraph (a) would be moved to § 177.800 and the remainder of the section would be removed.

*Section 177.855 Accidents; Class 1 (explosive) materials; 177.856 Accidents; Class 3 (flammable liquid) materials; 177.857 Accidents; Class 4 (flammable solid) and Class 5 (oxidizing) materials; 177.858 Accidents; Class 8 (corrosive) materials; 177.859 Accidents; Class 2 (gases) materials; 177.860 Accidents or leakage; Division 6.1 (poisonous) or Division 2.3 (poisonous gas) materials; 177.861 Accidents; Class 7 (radioactive) materials.* These sections prescribe general guidance on emergency response activities. Except for the provisions of § 177.856 (c) and (e), which are being moved to § 177.823 to make them applicable to all shipments, RSPA believes that, with the addition of the emergency response requirements for shippers and carriers in Part 172 of the HMR, these sections are no longer necessary and is proposing to remove them.

### C. Duplicative Sections

The following is a listing of those sections that are proposed for removal from the HMR because they are duplicative or refer the reader to a section of general applicability. In removing the sections listed below, RSPA believes that no substantive regulatory requirements are being removed. For example, RSPA is

proposing to remove §§ 174.480 and 174.580 because these requirements are already covered by § 174.680.

#### List of Affected Sections

171.13 Emergency regulations.  
173.314(h) Requirements for compressed gases in tank car tanks.  
173.444 Labeling requirements.  
173.446 Placarding requirements.  
173.463 Packaging and shielding-testing for integrity.  
174.7 Compliance and training.  
174.12 Intermediate shippers and carriers.  
174.45 Reporting hazardous materials incidents.  
174.57 Cleaning cars.  
174.69 Removal of placards and car certifications after unloading.  
174.100 Forbidden Class 1 (explosive) materials.  
174.208 Rail cars, truck bodies, or trailers with fumigated or treated lading.  
174.380 Class 3 (flammable liquid) materials, with a subsidiary hazard of Division 6.1 (poisonous) materials, with foodstuffs.  
174.430 Special handling requirements for Division 4.2 (pyroforic liquid) materials.  
174.480 Class 4 (flammable solid) materials, with a subsidiary hazard of Division 6.1 (poisonous) materials, with foodstuffs.  
174.580 Division 5.1 (oxidizer) materials, with a subsidiary hazard of Division 6.1 (poisonous materials), with foodstuffs.  
174.615 Cleaning cars.  
174.800 Special handling requirements for Class 8 (corrosive) materials.  
174.810 Special handling requirements for wet electric storage batteries.  
175.45 Reporting hazardous materials incidents. (With applicable change to § 171.15 and 171.16)  
176.76(f), (g)(1), (4) Transport vehicles, freight containers, and portable tanks containing hazardous materials.  
176.78(g), (4), (5) Use of powered-operated industrial trucks on board vessels.  
176.331 Transportation of Class 3 (flammable) liquids with foodstuffs.  
176.419 Class 4 (flammable solids) or Class 5 (oxidizers and organic peroxides) materials transported with foodstuffs.  
176.800 General stowage requirements. (last sentence)  
177.803 Export and import shipments by domestic carriers by motor vehicles.  
177.805 Canadian shipments and packagings.  
177.806 U.S. Government material.  
177.807 Reporting hazardous materials incidents.  
177.808 Connecting carrier shipments.  
177.812 Containers required.  
177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and other reports.  
177.821(c)(d)(f) Hazardous materials forbidden or limited for transportation.  
177.825 Routing and training requirements for Class 7 (radioactive) materials.  
177.836 Nonexplosive material.  
178.346-3 Structural integrity.  
178.346-4 Joints.  
178.346-5 Manhole assemblies.  
178.346-6 Supports and anchoring.

178.346-7 Circumferential reinforcement.  
178.346-8 Accident damage protection.  
178.346-9 Pumps, piping, hoses and connections.  
178.346-12 Gauging devices.  
178.346-14 Marking.  
178.346-15 Certification.  
178.347-3 Structural integrity.  
178.347-4 Joints.  
178.347-6 Supports and anchoring.  
178.347-7 Circumferential reinforcement.  
178.347-8 Accident damage protection.  
178.347-9 Pumps, piping, hoses and connections.  
178.347-11 Outlets.  
178.347-12 Gauging devices.  
178.347-14 Marking.  
178.347-15 Certification.  
178.348-3 Structural Integrity.  
178.348-4 Joints.  
178.348-5 Manhole assemblies.  
178.348-6 Supports and anchoring.  
178.348-7 Circumferential reinforcement.  
178.348-8 Accident Damage Protection.  
178.348-11 Outlets.  
178.348-12 Gauging devices.  
178.348-14 Marking.  
178.348-15 Certification.  
179.100-2 Approval.  
179.100-5 Bursting pressure.  
179.100-11 Tank mounting.  
179.100-22 Certificate of construction.  
179.104 Special requirements for spec. 105A200-F tank car tanks.  
179.104-1 Tanks built under these specifications must meet the requirements of §§ 179.100, 179.101, and when applicable §§ 179.102 and 179.104.  
179.104-2 Type.  
179.104-3 Tank mounting.  
179.104-4 Welding.  
179.106 [Reserved]  
179.200-2 Approval.  
179.200-5 Bursting pressure.  
179.200-12 Tank mounting. See § 179.10.  
179.200-20 Interior heater systems.  
179.200-26 Certificate of construction.  
179.202-179.202-22 [Reserved]  
179.220-2 Approval.  
179.220-5 Bursting pressure.  
179.220-12 Tank mounting.  
179.220-21 Interior heating systems.  
179.220-27 Certificate of construction.  
179.300-2 Approval.  
179.300-5 Bursting pressure.  
179.300-11 Tank mounting.  
179.400-2 Approval.  
179.400-6(a) Bursting and buckling pressure.  
179.400-26 Certificate of construction.  
179.500-2 Approval.  
179.500-9 Tank mounting.

### III. Regulatory Analyses and Notices

#### Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR

11034). The economic impact of this rule is minimal to the extent that the preparation of a regulatory evaluation is not warranted.

#### *Executive Order 12612*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (i) The designation, description, and classification of hazardous material;
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (iii) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;
- (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This proposed rule would remove unnecessary, obsolete and duplicative regulations governing the transportation of hazardous materials. RSPA solicits comments on whether the proposed rule would have any affect on State, local or Indian tribe requirements and, if so, the most appropriate effective date of Federal preemption. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

#### *Regulatory Flexibility Act*

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule does not impose any new requirements on persons subject to the HMR.

#### *Paperwork Reduction Act*

This proposed rule does not propose any new information collection requirements.

#### *Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### *List of Subjects*

#### *49 CFR Part 107*

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

#### *49 CFR Part 110*

Disaster assistance, Education, Emergency preparedness, Grant programs—Environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

#### *49 CFR Part 171*

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

#### *49 CFR Part 172*

Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

#### *49 CFR Part 173*

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

#### *49 CFR Part 174*

Hazardous materials transportation, Radioactive materials, Railroad safety.

#### *49 CFR Part 175*

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

#### *49 CFR Part 176*

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

#### *49 CFR Part 177*

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

#### *49 CFR Part 178*

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

#### *49 CFR Part 179*

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 107, 110, 171, 172, 173, 174, 175, 176, 177, 178, and 179 would be amended to read as follows:

### **PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

1. The authority citation for part 107 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701, 49 CFR 1.45, 1.53.

#### **§ 107.111 [Amended]**

2. In § 107.111, paragraph (d) would be removed and reserved.

#### **§ 107.504 [Amended]**

3. In § 107.504(a) and (c), the phrase "three years" would be removed and replaced with the phrase "six years" each place it appears.

### **PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS**

4. The authority citation for Part 110 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.53.

#### **§ 110.30 [Amended]**

5. In § 110.30, paragraph (a)(4) would be removed and reserved.

### **PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

6. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.53.

#### **§ 171.13 [Removed]**

7. Section 171.13 would be removed.

8. In § 171.15, paragraph (b), the introductory text would be revised to read as follows:

#### **§ 171.15 Immediate notice of certain hazardous materials incidents.**

\* \* \* \* \*

(b) Each notice required by paragraph (a) of this section shall be given to the Department by telephone (tollfree) on

800-424-8802. Notice involving etiologic agents may be given to the Director, Centers for Disease Control, U.S. Public Health Service, Atlanta, Ga. (800) 232-0124, in place of the notice to the Department or (toll call) on 202-267-2675. Notice involving shipments transported by aircraft shall also be reported to the nearest FAA Civil Aviation Security Office by telephone at the earliest practical moment after each incident. Each notice must include the following information:

\* \* \* \* \*

9. In § 171.16, paragraph (b) would be revised to read as follows:

**§ 171.16 Detailed hazardous materials incident reports.**

\* \* \* \* \*

(b) Each carrier making a report under this section shall send the report to the Information Systems Manager, DHM-63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001; and, for incidents involving transportation by aircraft, a copy of the report shall be sent to the FAA Civil Aviation Security Office nearest the location of the incident. A copy of the report shall be retained for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in writing by an agency of the Department of Transportation.

\* \* \* \* \*

**PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATION, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS**

10. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR part 1.53.

11. In § 172.101, paragraph (g) would be revised to read as follows:

**§ 172.101 Purpose and use of hazardous materials table.**

\* \* \* \* \*

(g) *Column 6: Labels.* Column 6 specifies codes which represent the hazard warning label(s) required for a package filled with a material conforming to the associated hazard class and proper shipping name, unless the package is otherwise excepted from labeling by a provision in subpart E of part 172, or part 173 of this subchapter. The first code is indicative of the primary hazard of the material. Additional label codes are indicative of subsidiary hazards. Provisions in

§ 172.402 of this part may require that a label other than that specified in Column 6 be affixed to the package in addition to that specified in Column 6. No label is required for a material classed as a combustible liquid or for a Class 3 material that is reclassified as a combustible liquid. The codes contained in Column 6 are defined according to the following table.

**LABEL SUBSTITUTION TABLE**

| Label code                  | Label name                      |
|-----------------------------|---------------------------------|
| 1 .....                     | EXPLOSIVE.                      |
| 1.1 <sup>1</sup> .....      | EXPLOSIVE 1.1 <sup>1</sup> .    |
| 1.2 <sup>1</sup> .....      | EXPLOSIVE 1.2 <sup>1</sup> .    |
| 1.3 <sup>1</sup> .....      | EXPLOSIVE 1.3 <sup>1</sup> .    |
| 1.4 <sup>1</sup> .....      | EXPLOSIVE 1.4 <sup>1</sup> .    |
| 1.5 <sup>1</sup> .....      | EXPLOSIVE 1.5 <sup>1</sup> .    |
| 1.6 <sup>1</sup> .....      | EXPLOSIVE 1.6 <sup>1</sup> .    |
| 2.1 .....                   | FLAMMABLE GAS.                  |
| 2.2 .....                   | NON-FLAMMABLE GAS.              |
| 2.3 .....                   | POISON GAS.                     |
| 3 .....                     | FLAMMABLE LIQUID.               |
| 4.1 .....                   | FLAMMABLE SOLID.                |
| 4.2 .....                   | SPONTANEOUSLY COM-<br>BUSTIBLE. |
| 4.3 .....                   | DANGEROUS WHEN WET.             |
| 5.1 .....                   | OXIDIZER.                       |
| 5.2 .....                   | ORGANIC PEROXIDE.               |
| 6.1(I) <sup>2</sup> .....   | POISON.                         |
| 6.1(II) <sup>2</sup> .....  | POISON.                         |
| 6.1(III) <sup>2</sup> ..... | KEEP AWAY FROM FOOD.            |
| 6.2 .....                   | INFECTIOUS SUBSTANCE.           |
| 7 .....                     | RADIOACTIVE.                    |
| 8 .....                     | CORROSIVE.                      |
| 9 .....                     | CLASS 9.                        |

<sup>1</sup> Refers to the appropriate compatibility group letter.

<sup>2</sup> The packing group for a material is indicated in column 5 of the Table.

\* \* \* \* \*

**§ 172.101 [Amended]**

12. In § 172.101, the following changes would be made to the Hazardous Materials Table:

a. In Column (5), the heading would be revised to read "PG".

b. For the entry "Ethyl methyl ether", in Column (8B), the nonbulk packaging reference would be revised to read "201".

c. In column (6) the heading is revised to read "Label code", and:

(1) The word "EXPLOSIVE" would be removed in each place it appears;

(2) The words "FLAMMABLE GAS" would be removed and replaced with "2.1" in each place they appear;

(3) The words "NONFLAMMABLE GAS" would be removed and replaced with "2.2" in each place they appear;

(4) The words "POISON GAS" would be removed and replaced with "2.3" in each place they appear;

(5) The words "FLAMMABLE LIQUID" would be removed and replaced with "3" in each place they appear;

(6) The words "FLAMMABLE SOLID" would be removed and replaced with "4.1" in each place they appear;

(7) The words "SPONTANEOUSLY COMBUSTIBLE" would be removed and replaced with "4.2" in each place they appear;

(8) The words "DANGEROUS WHEN WET" would be removed and replaced with "4.3" in each place they appear;

(9) The word "OXIDIZER" would be removed and replaced with "5.1" in each place it appears;

(10) The words "ORGANIC PEROXIDE" would be removed and replaced with "5.2" in each place they appear;

(11) The word "POISON" would be removed and replaced with "6.1" in each place it appears;

(12) The words "KEEP AWAY FROM FOOD" would be removed and replaced with "6.1" in each place they appear;

(13) The words "INFECTIOUS SUBSTANCE" would be removed and replaced with "6.2" in each place they appear;

(14) The word "RADIOACTIVE" would be removed and replaced with "7" in each place it appears;

(15) The word "CORROSIVE" would be removed and replaced with "8" in each place it appears; and

(16) The word "CLASS" would be removed and replaced in each place it appears.

(17) For the entries "Organic peroxide type B, solid" "Organic peroxide type B, solid, temperature controlled"; "Organic peroxide type B, liquid"; and "Organic peroxide type B, liquid, temperature controlled", in column (6), the label entries are revised to read "5.2, 1".

**Appendix A to § 172.101 [Amended]**

13. In Appendix A to § 172.101, in "Table 1—Hazardous Substances Other Than Radionuclides", the second column, "Synonyms", would be removed.

**§ 172.201 [Amended]**

14. In § 172.201, paragraph (b) would be removed and reserved.

15. In § 172.203, paragraph (i)(4) would be added to read as follows:

**§ 172.203 Additional description requirements.**

\* \* \* \* \*

(i) \* \* \*

(4) The name of the shipper.

\* \* \* \* \*

16. In § 172.516, paragraphs (c)(1) and (d) would be revised to read as follows:

**§ 172.516 Visibility and display of placards.**

\* \* \* \* \*

(c) \* \* \*

(1) Be securely attached or affixed thereto or placed in a holder thereon;

\* \* \* \* \*

(d) The means used to attach a placard may not obscure any part of the placard's surface other than the borders and those areas, other than the Class number, symbol, and any text, minimally necessary to hold the placard in place.

\* \* \* \* \*

#### Appendix C to Part 172 [Removed]

17. Appendix C to part 172 would be removed.

#### PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

18. The authority citation for Part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§§ 173.10, 173.11, 173.324, 173.444, 173.446, 173.451, 173.463, 173.478 [Removed]

19. Sections 173.10; 173.11; 173.324; 173.444; 173.446; 173.451; 173.463; and 173.478 would be removed.

#### § 173.314 [Amended]

20. In § 173.314, paragraph (h) would be removed and reserved.

#### § 173.453 [Amended]

21. In the introductory text of § 173.453, the wording “§§ 173.451” would be revised to read “§§ 173.455”.

#### PART 174—CARRIAGE BY RAIL

22. The authority citation for Part 174 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§§ 174.7, 174.12, 174.16, 174.20, 174.33, 174.45, 174.57, 174.100, 174.107, 174.109, 174.208, 174.280, 174.380, 174.410, 174.450, 174.480, 174.510, 174.515, 174.580, 174.800, 174.810, 174.840 (Subpart M) [Removed]

23. Sections 174.7; 174.12; 174.16; 174.20; 174.33; 174.45; 174.57; 174.100; 174.107; 174.109; 174.208; 174.280; 174.380; 174.410; 174.450; 174.480; 174.510; 174.515; 174.580; 174.800; 174.810; and Subpart M (consisting of § 174.840) to part 174 would be removed.

#### § 174.615 [Amended]

24. In § 174.615, paragraph (a) would be removed and reserved.

#### PART 175—CARRIAGE BY AIRCRAFT

25. The authority citation for Part 175 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§§ 175.45, 175.640 [Removed]

26. Sections 175.45, and 175.640 would be removed.

#### PART 176—CARRIAGE BY VESSEL

27. The authority citation for Part 176 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§§ 176.33, 176.79, 176.331, 176.419, 176.906 [Removed]

28. Sections 176.33; 176.79; 176.331; 176.419; and 176.906 would be removed.

#### § 176.76 [Amended]

29. In § 176.76, paragraphs (f), (g)(1) and (g)(4) would be removed, introductory text of paragraph (g) would be redesignated as paragraph (f) introductory text, and paragraphs (g)(2), (g)(3), and (g)(5) would be redesignated as (f)(1), (f)(2), and (f)(3), respectively.

#### § 176.78 [Amended]

30. In § 176.78, paragraphs (g)(4) and (g)(5) would be removed and reserved.

31. In § 176.800, paragraph (a) would be revised to read as follows:

#### § 176.800 General stowage requirements.

(a) Each package required to have a Class 8 (corrosive) label thereon being transported on a vessel must be stowed clear of living quarters, and away from foodstuffs and cargo of an organic nature.

\* \* \* \* \*

#### PART 177—CARRIAGE BY PUBLIC HIGHWAY

32. The authority citation for Part 177 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

33. In § 177.800, paragraph (d) would be added to read as follows:

#### § 177.800 Purpose and scope of this part and responsibility for compliance and training.

\* \* \* \* \*

(d) *No unnecessary delay in movement of shipments.* All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.

§§ 177.803, 177.805, 177.806, 177.807, 177.808, 177.809, 177.811, 177.812, 177.813, 177.814, 177.815, 177.825, 177.826, 177.836, 177.844, 177.853, 177.855, 177.856, 177.857, 177.858, 177.859, 177.860, 177.861 [Removed]

34. Sections 177.803; 177.805; 177.806; 177.807; 177.808; 177.809; 177.811; 177.812; 177.813; 177.814; 177.815; 177.825; 177.826; 177.836; 177.844; 177.853; 177.855; 177.856; 177.857; 177.858; 177.859; 177.860; and 177.861 would be removed.

#### § 177.821 [Amended]

35. In § 177.821, paragraphs (c), (d), (e) and (f) would be removed.

36. In § 177.823, paragraphs (b) and (c) would be added to read as follows:

#### § 177.823 Marking and placarding motor vehicles.

\* \* \* \* \*

(b) *Disposition of contents of cargo tank when unsafe to continue.* In the event of a leak in a cargo tank of such a character as to make further transportation unsafe, the leaking vehicle should be removed from the traveled portion of the highway and every available means employed for the safe disposal of the leaking material by preventing, so far as practicable, its spread over a wide area, such as by digging trenches to drain to a hole or depression in the ground, diverting the liquid away from streams or sewers if possible, or catching the liquid in containers if practicable. Smoking and the lighting of cigarettes, cigars, or pipes in the vicinity is prohibited, and fires or flames in the vicinity of the leaking cargo tank must be extinguished.

(c) *Transportation of leaking cargo tanks.* A leaking cargo tank may only be transported the minimum distance necessary to reach a place where the contents of the tank or compartment may be disposed of with safety. Every available means must be utilized to prevent the leakage or spillage of the liquid upon the highway.

#### § 177.837 [Amended]

37. In § 177.837, paragraph (a) would be removed and reserved.

#### § 177.838 [Amended]

38. In § 177.838, paragraphs (d) and (e) would be removed and reserved.

#### PART 178—SPECIFICATIONS FOR PACKAGINGS

39. The authority citation for Part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§§ 178.346-3, 178.346-4, 178.346-5, 178.346-6, 178.346-7, 178.346-8, 178.346-9, 178.346-12, 178.346-14, 178.346-15, 178.347-3, 178.347-4, 178.347-6, 178.347-7, 178.347-8, 178.347-9, 178.347-11, 178.347-12, 178.347-14, 178.347-15, 178.348-3, 178.348-4, 178.348-5, 178.348-6, 178.348-7, 178.348-8, 178.348-11, 178.348-12, 178.348-14, 178.348-15 [Removed]

40. Sections 178.346-3; 178.346-4; 178.346-5; 178.346-6; 178.346-7; 178.346-8; 178.346-9; 178.346-12; 178.346-14; 178.346-15; 178.347-3; 178.347-4; 178.347-6; 178.347-7; 178.347-8; 178.347-9; 178.347-11; 178.347-12; 178.347-14; 178.347-15; 178.348-3; 178.348-4; 178.348-5; 178.348-6; 178.348-7; 178.348-8; 178.348-11; 178.348-12; 178.348-14; and 178.348-15 would be removed.

#### Subpart J [Amended]

41. In subpart J, § 178.346-10, § 178.346-11, and § 178.346-13 are redesignated as § 178.346-3 through § 178.346-5, respectively; §§ 178.347-5; 178.347-10, and 178.347-13 are redesignated as §§ 178.347-3 through 178.347-5, respectively; and §§ 178.348-9, 178.348-10, and 178.348-13 are redesignated as §§ 178.348-3 through 178.348-5, respectively.

#### PART 179—SPECIFICATIONS FOR TANK CARS

42. The authority citation for Part 179 would continue to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

§§ 179.100-2, 179.100-5, 179.100-11, 179.100-22, 179.104, 179.104-1, 179.104-2, 179.104-3, 179.104-4, 179.106, 179.200-2, 179.200-5, 179.200-12, 179.200-20, 179.200-26, 179.202-179.202-22, 179.220-2, 179.220-5, 179.220-12, 179.220-21, 179.220-27, 179.300-2, 179.300-5, 179.300-11, 179.400-2, 179.400-26, 179.500-2, 179.500-9 [Removed]

43. Sections 179.100-2; 179.100-5; 179.100-11; 179.100-22; 179.104; 179.104-1; 179.104-2; 179.104-3; 179.104-4; 179.106; 179.200-2; 179.200-5; 179.200-12; 179.200-20; 179.200-26; 179.220-2; 179.220-5; 179.220-12; 179.220-21; 179.220-27; 179.300-2; 179.300-5; 179.300-11; 179.400-2; 179.400-26; 179.500-2; 179.500-9 would be removed.

#### § 179.400-6 [Removed and Reserved]

44. In § 179.400-6, paragraph (a) would be removed and reserved.

Issued in Washington, DC on October 5, 1995 under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95-25178 Filed 10-12-95; 8:45 am]

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#### National Highway Traffic Safety Administration

#### 49 CFR Part 571

#### Federal Motor Vehicle Safety Standards

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies a petition for rulemaking submitted by the Commonwealth of Pennsylvania Department of Transportation. The petitioner requested that NHTSA issue regulations to reduce the potential for tire tread separation and casing failure from new or retreaded truck tires, including regulations that ensure the stability of re-used casings, prescribe a maximum life of casings, and minimize truck rim separations. While NHTSA shares the petitioner's safety concerns, the agency believes that issuance of new safety requirements for tires and rims would not be an appropriate way of addressing this problem, which is primarily related to poor vehicle maintenance rather than to tire and rim performance.

**FOR FURTHER INFORMATION CONTACT:** Ms. Terri Droneburg, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Room 5307, Washington, DC 20590. Telephone (202) 366-6617; facsimile (202) 366-4329. For legal issues: Mr. Walter Myers, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Room 5219, Washington, DC 20590. Telephone (202) 366-2992; facsimile (202) 366-3820.

#### SUPPLEMENTARY INFORMATION:

##### Existing Standards

Federal Motor Vehicle Safety Standard (Standard) No. 117, *Retreaded pneumatic Tires*, establishes performance, labeling, and certification requirements for retreaded pneumatic passenger car tires. Among other things, the standard requires retreaded passenger car tires to comply with the tubeless tire resistance to bead

unseating and the tire strength requirements of Standard No. 109, *New pneumatic tires*. Standard No. 117 also specifies requirements for casings to be used for retreading, and certification and labeling requirements.

With respect to rims, Standard No. 110, *Tire selection and rims*, applicable to passenger cars, establishes rim dimension requirements and further specifies that in the event of a sudden loss of inflation pressure at a speed of 60 miles per hour, rims must retain a deflated tire until the vehicle can be stopped with a controlled braking application. Standard No. 120, *Tire selection and rims for motor vehicles other than passenger cars*, requires that vehicles other than passenger cars equipped with pneumatic tires be equipped with rims that are listed by the tire manufacturer as suitable for use with those tires, and that rims be labeled with certain information.

#### The Petition

The Commonwealth of Pennsylvania (COP) Department of Transportation submitted a petition for rulemaking requesting that NHTSA issue regulations "to reduce the potential for tread separation and casing failure from new or re-cap truck tires." COP further requested that the agency consider regulations ensuring the stability of re-used tire casings that may require establishing a maximum life of casings. Finally, COP requested that regulations be issued to "further minimize the potential for truck rims from separating from moving vehicles."

COP stated that over the past several years it has noticed an increase in separation of tire treads from truck tires and separations from truck rims. COP stated that this is a dangerous situation in that:

- \* Other vehicles, especially passenger cars, vans, and motorcycles can strike these tread separations, causing the vehicles to go out of control and crash;

- \* With increased travel on the interstate highways the probability of striking these pieces increases, particularly at night when visibility is limited;

- \* Law enforcement officers and highway maintenance personnel are vulnerable when trying to remove such debris from the roadways;

- \* Although COP's crash data does not readily identify crashes resulting from striking tread debris on the road, COP has identified 15 cases in which tire portions caused crashes in 1993, and 2 crashes resulting from vehicles striking truck rims on highways in 1993.